



6351-01-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038-AE22

Residual Interest Deadline for Futures Commission Merchants

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (“Commission” or “CFTC”) is proposing to revise the Residual Interest Deadline in Commission Rule 1.22. The amendment would remove the December 31, 2018 termination date for the phased-in compliance schedule for futures commission merchants (“FCMs”) and provide assurance that the Residual Interest Deadline would only be revised through a separate Commission rulemaking.

DATES: Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by RIN 3038-AE22, by any of the following methods:

- Agency web site, via its Comments Online process: <http://comments.cftc.gov>.

Follow the instructions for submitting comments through the web site.

- Mail: Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

- Hand Delivery/Courier: Same as Mail, above.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Please submit your comments using only one of these methods.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures set forth in § 145.9 of the Commission's regulations.¹

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from www.cftc.gov that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT:

Division of Swap Dealer and Intermediary Oversight: Thomas Smith, Deputy Director, 202-418-5495, tsmith@cftc.gov; Jennifer Bauer, Special Counsel, 202-418-5472, jbauer@cftc.gov; Joshua Beale, Attorney-Advisor, 202-418-5446, jbeale@cftc.gov, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

¹ Commission regulations referred to herein are found at 17 CFR Ch. 1 (2012). Commission regulations are accessible on the Commission's web site, www.cftc.gov.

Division of Clearing and Risk: M. Laura Astrada, Associate Chief Counsel, 202-418-7622, lastrada@cftc.gov, or Kirsten V. K. Robbins, Special Counsel, 202-418-5313, krobbins@cftc.gov, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

Office of the Chief Economist: Stephen Kane, Research Economist, skane@cftc.gov, 202-418-5911, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

On October 30, 2013, the Commission amended Regulation 1.22 to enhance the safety of funds deposited by customers with FCMs as margin for futures transactions.² The amendments require an FCM to maintain its own capital (hereinafter referred to as the FCM's "Residual Interest") in customer segregated accounts in an amount equal to or greater than its customers' aggregate undermargined amounts.³

If an FCM is required to increase its Residual Interest as a result of customer undermargined accounts, the FCM must deposit additional funds into the customer segregated accounts by the specified Residual Interest Deadline.⁴ The Commission established a phased-in compliance schedule for Regulation 1.22 with an initial Residual

² Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations, Final Rule, 78 FR 68506 (Nov. 14, 2013) (amending 17 CFR Parts 1, 3, 22, 30 and 140).

³ See 17 CFR 1.22(c)(3)(i). As defined in Regulation 1.22(c)(1), a customer's account is "undermargined," when the value of the customer funds for a customer's account is less than the total amount of collateral required by derivatives clearing organizations for that account's contracts. See 78 FR 68513, n.30.

⁴ See 17 CFR 1.22(c)(3)(i). The term "Residual Interest Deadline" is defined in Regulation 1.22(c)(5).

Interest Deadline of 6:00 p.m. Eastern Time on the date of the settlement referenced in Regulation 1.22(c)(2)(i) (the “Settlement Date”), beginning November 14, 2014.⁵

In addition, the Commission directed staff to publish for public comment a report (the “Report”) addressing, to the extent information is practically available, the practicability (for both FCMs and customers) of moving the Residual Interest Deadline from 6:00 p.m. Eastern Time on the Settlement Date, to the time of settlement or to some other time of day.⁶ The Report is also to address whether and on what schedule it would be feasible to move the Residual Interest Deadline, and the costs and benefits of such potential requirements.⁷ The Commission further directed staff to solicit public comment and conduct a public roundtable regarding specific issues to be covered by the Report.⁸ The Report is to be completed by May 16, 2016.⁹

Within nine months after the publication of the Report, the Commission may, by Order, terminate the phase-in period, or determine that it is necessary or appropriate in the public interest to propose through a separate rulemaking a different Residual Interest Deadline.¹⁰ Finally, absent Commission action, the phased-in compliance period for the Residual Interest Deadline will terminate on December 31, 2018, and the Residual Interest Deadline will change to the time of settlement on the Settlement Date.¹¹

⁵ See 17 CFR 1.22(c)(5)(ii)(A); see 78 FR 68578.

⁶ See 17 CFR 1.22(c)(5)(iii)(A).

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ See 17 CFR 1.22(c)(5)(iii)(B).

¹¹ See 17 CFR 1.22(c)(5)(iii)(C).

II. Discussion

As noted above, absent Commission action, the phase-in of the compliance period for the Residual Interest Deadline will automatically terminate on December 31, 2018, and change to the time of settlement on the Settlement Date. The Commission is proposing to revise Regulation 1.22 to remove the December 31, 2018 automatic termination of the phase-in compliance period. The proposal would instead provide that the Residual Interest Deadline would remain at 6:00 p.m. Eastern Time, unless the Commission takes further action via publication of a new rule.

The Commission is proposing to amend Regulation 1.22 in order to provide the Commission with a greater degree of flexibility to assess the issues and all relevant data associated with revising the Residual Interest Deadline. In this regard, the proposal would afford the Commission the opportunity to fully and carefully consider the views expressed during the public roundtable, the views and issues raised during the solicitation of public comments, and the results of the staff's Report, regarding the practicability and costs and benefits of revising the Residual Interest Deadline without the constraints of an established regulatory deadline for Commission action. The Commission is also proposing to revise Regulation 1.22 to make clear that any subsequent revision to the Residual Interest Deadline may only be effected through a separate rulemaking.

The Commission notes that this proposal does not alter the requirement in Regulation 1.22(c)(3)(i) that, commencing November 14, 2014, all FCMs maintain the requisite Residual Interest in customer accounts by no later than 6:00 p.m. Eastern Time on the Settlement Date.

The Commission invites comments on all aspects of the proposed amendments to the phase-in compliance period, including the costs and benefits of this proposed change. For example, does the automatic termination of the phase-in compliance period serve any useful purposes, such as focusing attention on the Report, that the Commission should consider? At this time, are there indications that issues regarding the practicability and costs and benefits of revising the Residual Interest Deadline will require significant time to consider, such that the automatic termination of the phase-in compliance period would hamper consideration of those issues? What are the particular concerns, if any, suggesting that the automatic termination of the phase-in compliance period is inappropriate in the specific context of Regulation 1.22?

III. Cost-Benefit Considerations

Section 15(a) of the Commodity Exchange Act (“CEA”) requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.¹² Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

The proposed rule and the status quo baseline with which the costs and benefits are compared are similar. The baseline for this costs and benefits consideration is the

¹² 7 U.S.C. 19(a).

status quo, in which the 6:00 p.m. Eastern Time on the Settlement Date would apply until the Commission takes further action or, in the absence of further action, December 31, 2018. Inasmuch as the proposed rule would not change the settlement date, but would eliminate the December 31, 2018 deadline requiring FCMS to maintain sufficient Residual Interest in its customer accounts by the time of settlement on the Settlement Date, the Commission believes that there is not likely to be any material difference between this proposed rulemaking and the status quo baseline in terms of the first four section 15(a) factors.

With respect to the fifth section 15(a) factor, “other public interest considerations,” the Commission has considered that the presence of an automatic termination of the phase-in compliance period in the regulation may have beneficial effects. For example, the automatic termination of the phase-in compliance period may focus attention on the results of the Report and provide a timeline for the Commission’s consideration of issues about the Residual Interest requirement. On the other hand, the Commission has considered that time will be required to consider the Report and related roundtable and public comments, prior to any change in the Residual Interest Deadline. As it does not have relevant data to quantify a monetary value of the public interest considerations likely to be implicated by the proposed elimination of the December 31, 2018 deadline, the Commission has considered them qualitatively in reaching its preliminary decision to propose the elimination of the regulatory deadline. The Commission invites comment on the cost and benefit implications of all of the public interest considerations that are relevant to its proposal, as well as on the other section 15(a) factors.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”)¹³ requires Federal agencies, in promulgating regulations, to consider the impact of those regulations on small entities. The Commission has previously established certain definitions of “small entities” to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.¹⁴ The proposed regulations would affect FCMs. The Commission previously has determined that FCMs are not small entities for purposes of the RFA, and, thus, the requirements of the RFA do not apply to FCMs.¹⁵ The Commission’s determination was based, in part, upon the obligation of FCMs to meet the minimum financial requirements established by the Commission to enhance the protection of customers’ segregated funds and protect the financial condition of FCMs generally.¹⁶ Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed regulations will not have a significant economic impact on a substantial number of small entities.

The Commission invites comments on the impact of this proposed regulation on small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act (“PRA”) provides that a Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number issued by the Office of Management

¹³ 5 U.S.C. 601 et seq.

¹⁴ 47 FR 18618 (Apr. 30, 1982).

¹⁵ Id. at 18619.

¹⁶ Id.

and Budget (“OMB”). This proposed rulemaking amends requirements that contain a collection of information for which the Commission has previously received a control number from OMB. The title for this collection of information is “Regulations and Forms Pertaining to Financial Integrity of the MarketPlace, OMB control number 3038-0024”. This collection of information is not expected to be impacted by the rule amendment proposed herein, as the calculations which are already reflected in the burden estimate are not expected to change, but the phase-in period for assessing compliance relative to such calculations is solely proposed to be altered. The PRA burden hours associated with this collection of information are therefore not expected to be increased or reduced as a result of the amendment proposed.

Accordingly, for purposes of the PRA, these proposed rule amendments, if promulgated in final form, would not impose any new reporting or recordkeeping requirements. The Commission invites public comment on the accuracy of its estimate that no additional information collection requirements or changes to existing collection requirements would result from the rules proposed herein.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR chapter I as set forth below:

PART 1 – GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 6p, 6r, 6s, 7, 7a-1, 7a-2, 7b, 7b-3, 8, 9, 10a, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23, and 24 (2012).

2. In § 1.22, revise paragraphs (c)(5)(iii)(B) and (C) to read as follows:

§ 1.22 Use of futures customer funds restricted.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(B) Nine months after publication of the report required by paragraph

(c)(5)(iii)(A) of this section, the Commission may (but shall not be required to) do either of the following:

(1) Terminate the phase-in period through rulemaking, in which case the phase-in period shall end as of a date established by a final rule published in the Federal Register, which date shall be no less than one year after the date such rule is published; or

(2) Determine that it is necessary or appropriate in the public interest to propose through rulemaking a different Residual Interest Deadline. In that event, the Commission shall establish, if necessary, a phase-in schedule in the final rule published in the Federal Register.

(C) If the phase-in schedule has not been terminated or revised pursuant to paragraph (c)(5)(iii)(B) of this section, then the Residual Interest Deadline shall remain 6:00 p.m. Eastern Time on the date of the settlement referenced in paragraph (c)(2)(i) or,

as appropriate, (c)(4) of this section until such time that the Commission takes further action through rulemaking.

Issued in Washington, DC, on November 3, 2014, by the Commission.

Christopher J. Kirkpatrick,
Secretary of the Commission.

NOTE: The following appendices will not appear in the Code of Federal Regulations.

**Appendices to Residual Interest Deadline for Futures Commission Merchants –
Commission Voting Summary and Chairman’s Statement**

Appendix 1 – Commission Voting Summary

On this matter, Chairman Massad and Commissioners Wetjen, Bowen, and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

Appendix 2 – Statement of Chairman Timothy G. Massad

I support the Staff’s recommendation. One of my priorities has been to fine-tune our rules to make sure they work as intended and do not impose undue burdens or unintended consequences, particularly for the nonfinancial commercial businesses that use these markets to hedge commercial risks. The proposed amendment is consistent with that goal. It is designed to help ensure that the funds deposited by customers with Futures Commission Merchants, or FCMs, remain safe. It is not a major change, but it is significant in making sure that manufacturers, farmers, ranchers, and other companies that rely on the derivatives markets to hedge routine business risks can continue to use them efficiently and effectively.

The rule prohibits an FCM from using customer funds of one customer for the benefit of another customer. Last fall, the Commission amended Regulation 1.22 to further enhance the safety of such funds by making sure that customer accounts have sufficient margin. On any day when a customer is required to post additional margin but has not yet done so, the FCM must maintain its own capital – often referred to as the FCM’s “Residual Interest” – in customer segregated accounts to make up the difference. The amendments provided that the FCM must deposit the additional funds by a specified deadline. Specifically, the amendments said that as of November 14, 2014, the deadline would be 6:00 pm Eastern Time on the settlement date. The deadline for the FCMs to post their capital affects the deadline for customers to increase their own funds.

The amendments passed last fall also provide that the Commission will conduct a study, and solicit public comment – including by way of a public roundtable – concerning the practicability, for both FCMs and their customers, of moving that deadline from 6:00 pm to the morning daily clearing settlement cycle or the time of settlement, which I will refer to as 9:00 am for convenience. The amendments said the Commission would decide, within nine months after publication of the report, whether to move the deadline to 9:00 am. Finally, the amendments said that if the Commission failed to take any action, the deadline would automatically move to 9:00 am as of December 31, 2018.

Today, we are making a minor, but important, change. We are proposing to eliminate the provision that says the deadline will automatically move to 9:00 am as of December 31, 2018. The deadline will still move to 6:00 pm as of November 14 of this year, and we will still conduct a study of the practicability of making the deadline earlier. An earlier residual interest deadline better protects customers from one another, in line

with the statute, but we want to make sure we move deliberately so that the model works best for customers in light of all of their interests, since the deadline will affect how much margin customers have to post and when. Today's proposal will make sure that customers have an opportunity to not only review the study but give us input when we consider whether to accelerate the deadline.

[FR Doc. 2014-26978 Filed 11/13/2014 at 8:45 am; Publication Date:
11/14/2014]